

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
Department of Vermont Health Access (DVHA)**

**SUBJECT: Disproportionate Share Hospital (DSH) – State Plan Amendment (SPA) 10-013**

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**Public Comments received at the Public Meeting held on October 19, 2010:**

**Question 1:**

The amendment to the State plan includes the following statement: “When all cost reports are available, the State will recalculate each hospital’s specific payment limit starting with Medicaid State Plan year (SPY) FY 2011 using audited Medicare Cost Reports from FY 2011.”

A question was raised during the public question process in terms of the word “audited” in this statement. A question was posed about whether this would cause undue burden for this audit requirement and whether it would cause delay in meeting the audit requirement. The questioner requested that the Department of Vermont Health Access raise this question with CMS.

**Answer:**

This issue has been raised by several public commenters during CMS’s public comment period of their proposed rule published on August 26, 2005. CMS addressed this issue in their final rule published on December 19, 2008. CMS also addressed this issue extensively in the document entitled Additional Information on the DSH Reporting and Audit Requirements. This document can be found at the following link: <http://www.cms.gov/MedicaidRF/Downloads/AdditionalInformationontheDSHReportingandAuditRequirements.pdf>.

In particular, this question is addressed in question 2 of this document which reads as follows:

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**Question 2:**

If as-filed Medicare cost reports are used to calculate hospital-specific DSH limits, do limits have to be adjusted to reflect the final settlement of the cost report or the outcome of cost report appeals?

**Answer:**

We expect that reports and audits will be based on the best available information. If audited Medicare cost reports are not available, the DSH report and audit may need to be based on Medicare cost reports as filed. Most hospital cost reports are finalized within two years of the period being audited but there is always the possibility of post-audit adjustments. To the extent that such adjustments to cost reports affects Medicaid payments, States should notify CMS of the adjustments to the cost reports and any subsequent DSH audit report changes as well as make appropriate prior period adjustments through the MBES/CBES system. Additionally, we would anticipate the auditor’s certification would identify any data issues or other caveats that the auditor has identified as impacting the results of the audit.

The statutory authority instructed States to report and audit specific payments and specific costs. Consistent with that provision, States must perform audits associated with defined periods of time and must identify the

actual costs incurred and payments received during that defined time period. In order for the audits to properly measure these elements and in consideration of the many comments related to retroactivity and timing issues associated with gathering the data necessary to identify the costs and revenues, CMS has made several revisions to the final rule including identifying that: (i) the Medicaid State plan rate year 2005 is the first time period subject to the audit; and, (ii) the deadline on reporting the audit findings has been extended to at least three full years after the close of the Medicaid State plan rate year subject to audit.

The required reports and audits may be submitted as late as the last day of the Federal fiscal year ending three years after the end of the Medicaid State plan rate year, with a special timing provision for the audits for 2005 and 2006, which will be due by December 31, 2009. This three year period accommodates the one-year concern expressed in many comments regarding claims lags and is consistent with the varying cost report period and adjustments.”

In short, the Department of Vermont Health Access believes that CMS has adequately addressed this question in the final rule and in the guidance that they have provided. In particular, the final rule extended the timeline originally proposed for the federal audit to be the last day of the Federal fiscal year ending three years after the end of the Medicaid State Plan rate year. According to this direction, the FFY2011 DSH audit is not due to CMS until September 30, 2014. The Department of Vermont Health Access will provide all required documentation required by the federal DSU audit by the due date specified by CMS.

At this time, the DVHA does not believe that hospitals will need to participate in the calculation of updated hospital limits using audited cost report data. This will be calculated the DVHA staff and DSH auditors. DSH payments to hospitals will only be adjusted if it is found through the calculation of hospital limits that the DVHA inadvertently made a DSH payment that exceeded the hospital limit.

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To get more information about the DSH State Plan Amendment go to  
<http://dvha.vermont.gov/administration/draft-versions-of-state-plan-changes>.